

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 62

April 16, 1996, 7:12 p.m.  
Page S-3381 Temp. Record

## TERRORISM PREVENTION CONFERENCE/Civilian Law Enforcement by Military

**SUBJECT:** Conference report to accompany the Antiterrorism and Effective Death Penalty Act of 1996 . . . S. 735.  
Hatch/Dole motion to table the Biden/Nunn motion to recommit with instructions.

### ACTION: MOTION TO TABLE MOTION TO RECOMMIT AGREED TO, 50-46

**SYNOPSIS:** The conference report to accompany S. 735, the Terrorism Prevention Act, will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures.

**The Biden/Nunn motion to recommit with instructions** would direct Senate conferees to insist on the adoption of the "posse comitatus" provisions from the Senate bill. Those provisions will allow the military, on request, to engage in law enforcement activities in response to biological and chemical weapon threats (the military already has authority to respond to nuclear weapon threats). More specifically, those provisions will provide for the following:

- the Attorney General may request the Secretary of Defense to provide assistance in support of Department of Justice activities relating to an emergency situation involving a biological or chemical weapon of mass destruction;
- the military will be allowed to give aid to the extent that giving it will not harm the military preparedness of the United States;
- the Department of Justice will reimburse the Defense Department for any aid that is given;
- to qualify as an emergency situation in which the military may be used as civilian police, there will have to be a serious threat to the interests of the United States, and the following conditions will have to be met: civilian expertise will not be readily available to counter the threat; military capabilities and expertise will be needed to counter the threat; and the enforcement of the law will be seriously impaired without military involvement; and
- the President will take reasonable measures to reduce civilian law enforcement officials' reliance on Defense resources.

During debate, Senator Hatch, for himself and Senator Dole, moved to table the Biden/Nunn motion. The motion to table is not debatable; however, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the

(See other side)

YEAS (50)			NAYS (46)			NOT VOTING (4)	
Republicans (49 or 98%)		Democrats (1 or 2%)	Republicans (1 or 2%)	Democrats (45 or 98%)		Republicans (3)	Democrats (1)
Abraham	Hatch	Feingold	Specter	Akaka	Inouye	Hatfield- <sup>2</sup>	Murray- <sup>2</sup>
Ashcroft	Helms			Baucus	Johnston	Mack- <sup>2</sup>	
Bennett	Hutchison			Biden	Kennedy	Murkowski- <sup>4AY</sup>	
Bond	Inhofe			Bingaman	Kerrey		
Brown	Jeffords			Boxer	Kerry		
Burns	Kassebaum			Bradley	Kohl		
Campbell	Kempthorne			Breaux	Lautenberg		
Chafee	Kyl			Bryan	Leahy		
Coats	Lott			Bumpers	Levin		
Cochran	Lugar			Byrd	Lieberman		
Cohen	McCain			Conrad	Mikulski		
Coverdell	McConnell			Daschle	Moseley-Braun		
Craig	Nickles			Dodd	Moynihan		
D'Amato	Pressler			Dorgan	Nunn		
DeWine	Roth			Exon	Pell		
Dole	Santorum			Feinstein	Pryor		
Domenici	Shelby			Ford	Reid		
Faircloth	Simpson			Glenn	Robb		
Frist	Smith			Graham	Rockefeller		
Gorton	Snowe			Harkin	Sarbanes		
Gramm	Stevens			Heflin	Simon		
Grams	Thomas			Hollings	Wellstone		
Grassley	Thompson				Wyden		
Gregg	Thurmond						
	Warner						

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

motion to recommit; those opposing the motion to table favored the motion to recommit.

**Those favoring** the motion to table the motion to recommit contended:

We do not entirely disagree with the arguments that have been made by our colleagues. We know that the distinguished senior Senator from Georgia, who has joined in making the motion to recommit, has a long history of carefully separating military and civilian functions. In a democracy, one should be ever mindful of the corrosive danger of allowing a Federal military force assume civilian authorities that should be exercised locally under the control of elected officials. We also agree with him that the Senate-passed provisions are very narrowly drawn.

The fact remains, however, that Senators' opinions of the merit of the Senate's posse comitatus provisions are irrelevant. Many House Members are totally opposed to their acceptance. These Members include many new Republican Members, and they also include many far-left Democratic Members. That unusual coalition in the House would prevent passage of a conference report containing the Senate's provisions. Further, even if those provisions were not controversial this conference report would still be doomed if it were sent back to the conference committee. The House-passed and Senate-passed bills differed markedly, and Members in each body felt strongly about defending the provisions in their respective bills. The conference was successful only due to the personal intervention of the Majority Leader, who helped to broker a very delicate compromise. Sending the conference report back now would be the same as voting to kill it. House conferees will not be willing to accept a take-it-or-leave-it demand from the Senate, especially when there would be no assurance that if they did that further demands would not follow.

Many Members on the Democratic side of the aisle would be delighted to kill this bill because they object to its habeas corpus reforms that will stop endless appeals by death row prisoners and other prisoners. They do not want to kill the bill on those grounds, however, because they know that the vast majority of Americans strongly support habeas corpus reforms. Therefore, they hope to kill it with one of the motions to recommit that will be offered. We do not include the senior Senator from Georgia among those Senators whom we believe wishes to kill this bill, but we certainly do include many other Democratic Senators.

For our part, we are very supportive of the provisions in this bill. We are disappointed that a few measures that we supported did not make it into the conference report, but every conference report contains some compromises. We are not about to kill this bill just because we did not get our way on every issue. We can consider posse comitatus provisions on future legislation; it is too late for them to be put on this bill. We therefore urge the tabling of the motion to recommit.

**Those opposing** the motion to table the motion to recommit contended:

Armed Forces personnel are the only people in this country who have the special capabilities needed to counter nuclear, biological, and chemical weapon threats. They are trained and equipped to detect, to suppress, and to contain these dangerous materials in hostile situations. Though they are allowed under current law to help local police if there is a nuclear threat, they are barred from giving assistance to counter a biological or chemical weapon threat. This situation should not be allowed to stand.

The recent chemical attack in Tokyo amply illustrates that the threat is real and that it is growing. Hundreds of people were injured in that attack, and 15 to 20 died. The group that made that attack had the avowed goal of killing as many people as possible. That group had chemical stockpiles that were large enough to kill tens of thousands of people in a single attack, but it did not yet have the delivery system that it needed for a large attack. Reportedly, it was only a few weeks from acquiring such a system.

Unfortunately, we do not think that the Tokyo attack will prove to be an isolated incident. There are hundreds of terrorists organizations in the world, and their access to information and materials for biological and chemical weapons is growing all the time. Biological and chemical terrorist attacks in the United States are not merely possible, they are probable. For this reason the Senate included provisions in its version of this bill to give the military the authority to help counter these threats when they arise.

House conferees insisted on striking the Senate's provisions. They insisted on dropping them due to the concerns that some Republican Members expressed on giving the military any civilian law enforcement authority. In general, we share their concerns. We are well aware that one of the original reasons for the Revolutionary War was that the colonists greatly objected to the British Army being present and having greater civil authority than their legislatures. We also know that the nearly total restrictions on military involvement in civilian law enforcement that exist were enacted (in the Posse Comitatus Act) due to the Nation's experience with using the military to enforce Reconstruction laws in the South and to suppress union activities in the North. For many years we have been in the front of the fight to limit the use of the military to enforce laws. Often, those fights have been against Republican proposals, such as the Republican-led fight during the Reagan years to post the military along the border to keep out illegal aliens.

Paradoxically, we have now seemed to switch sides. Our House Republican colleagues oppose this very narrow use of the military to meet a very real threat that only the military can meet, and we favor it. The reality is that only our House colleagues have changed their minds; we have always supported very limited, very careful exemptions to the Posse Comitatus Act. We cannot explain why our House colleagues oppose these needed provisions, but we should not accede to their demands that they be dropped. The terrorist threat from biological and chemical weapons is real, and the Senate should insist that the military, which alone is capable of responding, be allowed to respond. We therefore support the motion to recommit.

**APRIL 16, 1996**

**VOTE NO. 62**

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